

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

James N. Howard,	)	
	)	
Petitioner,	)	Case No. 1:04-CV-784
	)	
vs.	)	
	)	
Warden, Noble Correctional	)	
Institute,	)	
	)	
Respondent.	)	

Order Adopting Report and Recommendation

This matter is before the Court upon Petitioner's objections to the September 1, 2005, Report and Recommendation of United States Magistrate Judge Timothy S. Hogan. The Magistrate Judge recommended that Respondent's motion to dismiss (Doc. 3) be granted and Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) be dismissed with prejudice.

Petitioner has asserted various objections, all of which the Court has carefully considered in accordance with the *de novo* standard prescribed by Rule 72 (b) of the Federal Rules of Civil Procedure. The Court's own review of the procedural history of this matter mirrors the Magistrate Judge's in every material respect. Moreover, the Court's legal analysis does not depart from that of the Magistrate Judge in any fashion that is pertinent to the objections asserted by Petitioner Howard. In short, the Court finds that Petitioner's objections are without merit.

For that reason, Petitioner's objections are hereby **OVERRULED**. The Court **ADOPTS** the Report and Recommendation in its entirety. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is hereby **DISMISSED** with prejudice.

The Court hereby **CERTIFIES** the appealability of this Order, inasmuch as "jurists of reason" may find debatable the correctness of this Court's procedural ruling and might conclude that Petitioner has stated viable constitutional claims for relief in the petition to the extent that the issues presented therein are "adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (citing the two-part test set forth in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (in turn citing Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983))).

This Court **CERTIFIES**, pursuant to 28 U.S.C. §1915(a)(3), that an appeal from this Order would be taken in good faith. Accordingly, Petitioner will be granted leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

**IT IS SO ORDERED.**

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/s/  
Sandra S. Beckwith, Chief Judge  
United States District Court